

When recorded return to:

Bagdad Hillside LLC
c/o Peter Rome, Esq.
Ulmer & Berne LLP
1600 W. 2nd Street, Suite 1100
Cleveland, Ohio 44113

COPY

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made this 16th day of December, 2016 (the "Commencement Date"), by and between BAGDAD HILLSIDE LLC, an Arizona corporation ("Grantor"), and the STATE OF ARIZONA ("Grantee").

WHEREAS Grantee is the owner of certain State Trust land, Section 20, Township 15N, Range 9W, upon which lies what is known as the Lower Tailings Pile, which is the southernmost of three tailings piles of the historic Hillside Mine lying in close proximity to Boulder Creek.

WHEREAS Boulder Creek is listed as impaired under the federal Clean Water Act. The Arizona Department of Environmental Quality, Arizona Department of Risk Management, Arizona State Land Department and various other partners are developing a plan to remediate the Lower Tailings Pile.

WHEREAS Grantor is the owner of certain land in Sections 16 and 21 of Township 15N, Range 9W.

WHEREAS, in order to complete the remediation of the Lower Tailings Pile, Grantee will need to construct an access road across Grantor's land.

WHEREAS Grantee acknowledges that Grantor needs continual access through certain State Trust land and Grantee, through the Arizona State Land Department, agrees to grant such access in a separate instrument suitable for the granting of such permission to access State Trust land.

AGREEMENT

Subject to the terms and conditions set forth herein and for good and valuable consideration, the parties hereto state, confirm and agree as follows:

1. Grant of Easements and License.

Grantor hereby grants to Grantee a non-exclusive easement (the "Easement") in, on, across, under, and through the property described and depicted on Exhibit "A" (attached hereto and

made a part hereof) (the "Easement Property") for the purpose of constructing an unpaved road to permit access to the Arizona State Trust Land in sections 20 and 21, Township 15N, Range 9W, to allow remediation and monitoring of the Lower Tailings Pile (the "Purpose").

2. No Implied Rights; No Representations or Warranties.

Notwithstanding anything herein to the contrary with respect to the Easement and the Easement Property, Grantor makes no representations or warranties, express or implied, including warranties of title, and Grantee agrees to accept and use the Easement Property in "AS IS" condition and to bear all risks associated with the Easement and the condition of the Easement Property. Grantee is entering into this Agreement and shall use the Easement Property based on Grantee's inspection and investigation of all matters pertaining thereto and not in reliance on any representation, warranty or agreement of Grantor. Grantee agrees that the Easement is subject and subordinate to all existing easements, rights of way and other rights, including, without limitation, all matters of record and all matters that can be disclosed by a physical inspection and survey of the Easement Property.

3. Duties and Obligations of Grantee.

Grantee shall exercise reasonable care in its use of the Easement Property and shall, at the expense of Grantee, regularly inspect, maintain, repair and keep the Easement Property in a good, safe, and workmanlike condition suitable to the Purpose. Grantee shall comply with all laws, rules and regulations, now in force and hereafter enacted, including, without limitation, all environmental, safety and health related laws and regulations, in connection with its use of the Easement Property. Grantor shall have no duty or obligation to inspect or maintain the Easement Property in a condition suitable to the Purpose. Grantee shall repair and replace, at its expense, any present or future roadway, improvement, structure, building, fence or gate that is disturbed, destroyed or damaged as a result of Grantee's construction, maintenance, protection, repair, replacement or removal of the Easement or the Easement Property. Specifically, Grantee shall comply with the following obligations, the breach of any of which constitutes default as outlined in Section 12:

- A. Grantee shall construct suitable gates within the Easement Property at the boundaries of Grantor's property.
- B. Any material Grantee disturbs within the Easement Property shall remain on and will be stockpiled on Grantor's land.
- C. Grantee shall share with Grantor in a timely manner any and all data, environmental and otherwise, related to the construction and maintenance of the access road, and the remediation.
- D. Grantor shall retain unencumbered access to the Easement Property during road construction to evaluate and monitor all activities.

4. Term.

The "Term" of this Agreement shall commence on the Commencement Date above. Grantee is granted regular and continuous access to the Easement Property for road construction and post-construction activities and monitoring beginning on the Commencement Date and ending June 30, 2018. Thereafter, Grantee is granted periodic access to the Easement Property to conduct road maintenance and to maintain and monitor the remediation site until June 30, 2033, or until such earlier date as herein provided (the "Termination Date").

5. Early Termination.

Grantor may terminate the Agreement immediately following Grantee's default and failure to cure such default, as provided herein.

6. No Liens.

Grantee shall at all times keep and maintain the Easement Property free and clear of any and all liens, claims, demands, obligations, liabilities and causes of action arising out of or in any manner relating to any work, including maintenance and repair work, performed on the Easement Property for or on behalf of Grantee or arising out of the use of or presence on the Easement Property by Grantee and its guests, invitees, agents and employees. If any demand, claim, lien or cause of action is filed, asserted or made on, against or with respect to the Easement Property, Grantee shall cause such lien, demand, claim or cause of action to be dismissed, released, and discharged therefrom no later than ten (10) days thereafter or commence proceedings to dismiss, release and discharge within ten (10) days and diligently pursue such proceedings until completed.

7. Indemnification and Release.

Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. Nothing in this Section 7 shall modify any other terms and conditions of this Agreement including, but limited not limited to: (i) that Grantee shall take the Easement Property in "AS IS" condition and bear all risks associated with the Easement and the condition of the Easement Property; and (ii) that Grantor shall have no duty or obligation to inspect or maintain the Easement Property in a condition suitable to the Purpose.

8. Environmental Issues.

A. Grantee shall comply, and shall cause all of its employees, agents, representatives, contractors, invitees and other third parties to comply, with all federal, state and local laws, statutes, rules, ordinances, codes and regulations relating to environmental protection, public health and safety, nuisance or menace, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, and its state and local counterparts presently in effect or amended or promulgated in the future (collectively, "Environmental Laws").

B. Grantee expressly warrants, represents and agrees that no Hazardous Substances (as hereinafter defined) will be released or disposed of on, under, or about the Easement Property either by Grantee or any of its employees, agents, representatives, contractors, invitees or other third parties. "Hazardous Substances" shall mean any substance, material, pollutant, contaminant, or waste, whether solid, gaseous or liquid, that is infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive, and that is regulated, defined, listed or included in any Environmental Law, including, but not limited to, asbestos, petroleum, or petroleum additive substances, polychlorinated biphenyls, urea formaldehyde, or waste tires.

C. Grantee shall not, and shall cause all of its employees, agents, contractors, and invitees and other third parties to agree not to bring onto the Easement Property any Hazardous Substances without the prior written consent of Grantor, and further agrees not to generate, handle, use, store or treat any Hazardous Substances on the Easement Property. Notwithstanding the foregoing, Grantor agrees that Hazardous Substances which are necessary in connection with the operation of the Grantee's construction activities shall be allowed on the Easement Property with the express written consent of Grantor as long as Grantee complies with all applicable Environmental Laws.

D. Nothing in this Agreement or in this Section 8 shall indemnify Grantor or relieve Grantor from its liability or responsibility, if any, related solely to Grantor's use of the Easement Property. Nor shall Grantee indemnify Grantor or its predecessors or successors in interest for any environmental issues related to the possession or use of any Hazardous Substances on the Easement Property to which Grantor has granted prior written consent. Grantee agrees to remediate the Easement Property for any alleged violations of Environmental Laws if such alleged violations arise out of or in connection with Grantee's possession or use of Hazardous Substances on the Easement Property without Grantor's prior written consent.

9. Environmental Notification.

Grantee and its employees, agents, representatives, contractors, invitees and other third parties shall promptly notify Grantor: (i) upon becoming aware of any release or threatened release of a Hazardous Substance under, on, from or about the Easement Property; (ii) of any proceeding, inquiry or notice from any federal, state or local body, commission, council, board or authority ("Governmental Authority") or others with respect to the use or presence of any Hazardous Substances on the Easement Property, or the migration thereof to or from other

property; and (iii) of all claims made or threatened by any third party against the Easement Property relating to loss or injury from any Hazardous Substance.

10. Insurance.

Grantee is self-insured pursuant to A.R.S. § 41-621.

11. No Assignment.

Grantee shall have no right to make any assignment of its rights, benefits or obligations hereunder and any such assignment shall be null and void and shall result in the immediate termination of this Agreement unless such assignment is prior approved by Grantor. Any such assignment with prior approval of Grantor shall require the assignee to be obligated by the terms and conditions of this Easement Agreement. Grantee and Grantor intend that this Agreement "touches and concerns" the Easement Property and is intended to run with the land that is the Easement Property.

12. Default.

In the event Grantee breaches any of the terms, conditions or agreements herein contained and such breach is not cured to the reasonable satisfaction of Grantor within 30 days after notification thereof to Grantee, Grantor shall have the right to terminate this Agreement effective immediately and, in addition thereto, take such legal action as Grantor shall determine, including the right to seek damages and/or specific performance and injunctive relief hereunder.

13. Fees and Costs.

If either party to this Agreement shall institute suit against the other to enforce its rights under this Agreement or to seek damages by reason of a breach of this Agreement and obtain a valid judgment against the other, the prevailing party shall be entitled to receive all its costs and attorneys' fees incurred, such attorneys' fees to be fixed by the judge of the court of the applicable jurisdiction, sitting without a jury.

14. Time of Essence.

Time is of the essence of this Agreement.

15. Governing Law.

This Agreement shall be governed by the laws of the State of Arizona.

16. Complete Agreement.

This Agreement constitutes the entire understanding between the parties with respect to the subject matter and replaces all other prior or contemporaneous premises, agreements and understandings. This Agreement may not be modified except by written agreement or amendment signed by both Grantor and Grantee, except as provided herein.

17. Notices.

Any notice, demand, request, consent, approval or other communication which any parties required to or desires to give or make to the other party shall be in writing and shall be given by delivery in person, by telecopy or by postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

If to Grantor: Bagdad Hillside LLC
AS Below.

With A Copy To: Peter Rome, Esq.
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113

If to Grantee: Arizona State Land Department
1616 West Adams
Phoenix, Arizona 85007
Attention: State Land Commissioner

With A Copy To: Arizona Attorney General
1275 West Washington
Phoenix, Arizona 85007
Attention: Natural Resources Division

18. Rights Reserved by Grantor.

Grantor and its agents, employees, tenants, contractors, invitees, licensees, and representatives (collectively "Grantor's Permittees") shall have the right to use and occupy the Easement Property for any and all purposes, including, without limitation, ingress and egress, the operation, maintenance, construction, relocation, repair and replacement of utilities, and the placement of any structures upon and within the Easement Property, provided that such structures constructed by Grantor and Grantor's permittees does not hinder, conflict or cause detriment to Grantee's facilities, create a safety hazard or otherwise unreasonably interfere with the Purpose or Grantee's use of the Easement Property.

19. No Partnership.

The relationship of the parties is that of Grantor and Grantee under the subject Easement, and it is expressly understood and agreed that Grantor and Grantee do not in any way or for any purpose become partners or joint venturers.

20. Severability.

Each covenant, condition and provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any covenant, condition or provision of this Agreement shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid covenant, condition or provision had not been contained herein.

21. Cancellation.

Grantee may cancel this Agreement within three (3) years of execution pursuant to the provisions of A.R.S. §38-511.

22. Arbitration.

In the event of a dispute between the parties to this Agreement, it is agreed to use arbitration to resolve the dispute, but only to the extent required by A.R.S. §§12-133 and 12-1518.

23. Non-Discrimination.

The parties agree to be bound by applicable State and Federal law governing Equal Employment Opportunity, Non-Discrimination and Disabilities, including Executive Order No. 2009-09.

24. Appropriations.

This Agreement shall be subject to available funding, and nothing in this Agreement shall bind the State to expenditures in excess of funds appropriated and allotted for the purposes outlined in this Agreement.

25. Authority.

Grantee represents and warrants to Grantor that Grantee has the statutory power and authority to bind itself to the terms of this Agreement and that all such power and authority has been properly delegated to the contracting officer executing this Agreement on behalf of Grantee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first herein above written.

Accepted and approved

STATE OF ARIZONA

BAGDAD HILLSIDE LLC, an Arizona corporation

By: Isabel Atkins

By: JOHN M. LOPEZ

Name: Arizona State Land Dept.

Name: [Signature]

Title: Commissioner

Title: MANAGER

GRANTEE

GRANTOR

COPY